Malice aforethought: A new homicide act for England and Wales?

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In July 2005, the Government asked the Law Commission to review the laws of England and Wales concerning homicide. The Law Commission produced a consultation report in November 2005 (henceforth LCR) [1] and invited responses by April 2006 [2]. They made it clear that the report was circulated for comment and criticism only, and did not represent their final views. This article is a brief overview of why the review was thought necessary, what the main proposals of the Law Commission were, and what merits and shortcomings they have from the perspective of the Catholic moral tradition with some attention to proposals of particular relevance to doctors.

The foundations of the law

The law governing homicide is a complex mixture of statutory law and common law principles. In addition to the Homicide Act 1957 (which developed from a common law background) there are many specific and ad hoc pieces of legislation which deal in some way with causing human death: the Infanticide Act 1922, the Road Traffic Act 1956, the Suicide Act 1961, the Law Reform (Year and a Day Rule) Act 1996, the Criminal Justice Act 2003, the Domestic Violence, Crime and Victims Act 2004, not to mention the Infant Life (Preservation) Act 1929, the Abortion Act 1967, and the Human Fertilisation and Embryology Act 1990.

According to the Law Commission, there is a weakness at the heart of all these acts of parliament in relation to the definition of murder that they presuppose. It was Lord Coke in the seventeenth century who provided the common law definition of murder:

> Murder is where a man of sound memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature in *rerum natura* under the King's peace, with malice aforethought, either expressed by the party or implied by law, so that the party wounded, or hurt, etc die of the wound or hurt, etc within a year and a day after the same (LCR 1.52).

As it stands this definition is not binding in law, for it has been modified by case law and statute to a considerable extent. For example, murder no longer requires 'malice aforethought' in the sense of prior planning, nor is the victim required to die 'within a year and a day' (this was changed in 1996, partly in recognition of advances in medicine which can keep victims alive for longer). Nevertheless, Coke's definition is still cited by judges. For example in the conjoined twins case of 2000, the judge asked whether the weaker twin fulfilled the definition of being a 'reasonable creature' (LCR 1.54 citing *Re A* [2001] Fam 147 (CA)).

The law governing homicide in England and Wales is thus 'a rickety structure set upon shaky foundations' (LCR 1.4). It stands in 'dire need' of comprehensive reform, with respect not only to sentencing guidelines but also with respect to the definition of murder and the structure of the offences and defences the law provides.

The law of murder

The need for reform is best illustrated by considering seven features of the law of murder as it currently applies in England and Wales.

The first feature to mention is that murder carries with it a mandatory life sentence. The life sentence has replaced capital punishment as the greatest penalty of the law, appropriate to the most serious crimes. The Government specifically excluded discussion of the mandatory life sentence from the remit of the Law Commission report (LCR 1.1 (1) (a)).

This element of the law is qualified by a second feature: while murder merits a life sentence, it is customary for only part of the sentence to be served in prison. After this time, an offender is released 'on license', but must abide by the terms of this license or faces a return to prison. Before 2003, the courts exercised considerable discretion in determining the minimum time offenders should spend in prison, but the Criminal Justice Act 2003 greatly limited the scope for discretion (LCR 1.27-1.29). This act sets out tariffs for different kinds of killing, for example killing with a gun: thirty years, killing with a knife: fifteen years. This starting point is then adjusted according to mitigating or aggravating factors listed in the Act. However, this seems a somewhat arbitrary and inflexible formula for determining time in prison. For example, is killing with a gun invariably twice as bad as killing with a knife?

A third feature of the law that deserves mention is that someone can commit the crime of murder without intending to kill the victim. An intention to commit 'grievous bodily harm' which results in the death of the victim is sufficient to convict the offender of murder. Consider the following example:

> D and V have been arguing over access to a parking space. V blocks D's way as D is trying to drive into the space in his large van. In order to get into the space, D drives over V's foot knowing he will break it in so doing. Complications set in when V is being treated in hospital for his broken foot, leading to his death. (LCR 1.60)

D is certainly guilty of some offence, but it seems unreasonable to hold D guilty of murder, especially when murder carries with it a mandatory life sentence.

Fourthly, the question of intention is further confused by the way in which existing law conflates foresight with intention. In *R v Woollin* [3] the House of Lords held that a defendant *intends* a consequence of his actions if he knows that consequence to be a virtually certain outcome. The problems with this are illustrated by an example given by Lord Goff:

> A house is on fire. A father is trapped in the attic floor with his two little girls. He comes to the conclusion that unless they jump they will all be burned alive. But he also realises that if they jump they are all likely to suffer serious personal harm. The children are too frightened to jump and so in an attempt to save their lives he throws one out of the window to the crowd waiting below and jumps with the other one in his arms. All are seriously injured, and the little girl he threw out of the window dies of her injuries. (LCR 4.21)

If foresight is equivalent to intention then the father is deemed to intend his daughter's injuries, and thus her death. The problem does not simply lie in finding a suitable defence for the father against a charge of murder. Rather, the idea that someone who is making great efforts in an attempt to save his daughter's life can be deemed to intend her death seriously undermines the credibility of the received legal account of 'intention'. It also poses problems for 'double effect' to which we will return below.

A fifth feature of the current law that demands attention is the system of partial defences. A full defence refers to a *justification* in law of someone's action so that they are not guilty of any crime. In the area of homicide 'reasonable self-defence' is a full defence against a charge of murder. Partial defences, if successful, lead not to acquittal but to a reduction of the criminal charge. For example, if someone can show that there was significant provocation, the charge is reduced from murder to manslaughter. The system of partial defences is both complicated and inherently flawed. Most notable is the lack of a partial defence of duress for murder. Judges and parliamentarians have resisted making duress a partial defence for murder, in part because of the way in which this might be abused by terrorists or those in criminal gangs. However, for the ordinary citizen there seems a huge difference between acting freely and maliciously and acting under duress (LCR Part 7).

A sixth feature which compounds the problems already outlined is the very severe approach of the law to complicity. Someone who encourages or helps another to commit a crime, knowing that the crime is likely to occur, is deemed guilty of the same crime. However, while it seems reasonable that someone who intentionally encourages another to commit a crime is guilty of that crime (for example, one who encourages a rape is guilty of rape), the same cannot be said in cases where the person who helps or indirectly encourages another does not share the plans or intention of the principal offender. Consider the following example:

> D is driving her car when a man (P1) gets in and points a gun at her head. P1 insists that D drive to a place where he tells her he will kill V. She drives there and speeds off as soon as he gets out of the car. P1 then kills V. Earlier in the day, another person (P2) has threatened P1 with death if he does not kill V. (LCR 7.75)

In this example P1, P2 and D are all guilty of murder in the eyes of the law, even though the complicity of D seems utterly remote from that of P2. In this example a number of problems are compounded: that murder carries a mandatory life sentence (feature one); that there are standard tariffs, one of the highest being for murder with a gun (feature two); that foresight of causing a result is considered in law to be equivalent to intention (feature four); there is no partial defence of duress (feature five); and that someone who gives help or encouragement is automatically judged equally with the main offender (feature six). D who is in truth a victim in these events, and who may even subsequently try to stop the crime by calling the police, is sufficiently culpable to be convicted of murder, with no defence available.

The final feature of note is the age which attracts criminal liability in English law: ten years of age. Furthermore, there is no explicit recognition of age or immaturity in the partial defences for the crime of murder. This feature leads to consequences which are positively Dickensian in their harshness. The following example is given in the Report:

> A psychopathic father compels his eleven-year old son through threats of death to participate in the murder of one of his father's rivals. The child does no more than hold the father's gun whilst the father forces open the rival's house prior to the killing. (LCR 7.5)

In this example, whereas the psychopathic father may well be able to claim the partial defence of diminished responsibility, the child is deemed fully responsible and guilty of complicity to murder, complete with its mandatory life sentence. Note again the compounding effect of the mandatory life sentence, the standard tariffs, the peculiar legal account of intention, the lack of recognition of duress, the rigorist treatment of complicity, and finally, the age of criminal liability. While in practice in this case, or in the other cases cited, the police might decide not to prosecute or the jury might ignore the facts and find the person not guilty, such remedies fall outside the law. Furthermore these remedies are wholly discretionary and, as such, are easily subject to prejudice or arbitrary features of the particular case.

While there is a widespread perception in the media that the English courts are soft on criminals, over the last twenty or thirty years both the number of custodial sentences and the length of sentences have risen steadily. The result of such 'sentence inflation' is that, for example, between 1991 and 2004 the prison population grew from 42,000 to 75,500 [4]. Aside from the obvious public policy issues, it is clear that the law itself is defective in a number of fundamental areas and is indeed in 'dire need' of reform.

The main Law Commission proposal

In the face of all these issues, the main proposal of the Law Commission is to divide criminal homicide into: 'first degree murder', where death is intended; 'second degree murder', which would include killing where bodily harm was intended (currently included in murder) as well as criminal acts such as arson showing a reckless indifference to causing death (currently included in manslaughter); and 'manslaughter' which would include gross negligence and reckless stupidity. The new offence of second degree murder would have a discretionary sentence and thus eliminate some of the undue severity of the mandatory life sentence for murder. There would also be a reform of partial defences to include duress and developmental immaturity, and all partial defences would have the effect of reducing first degree murder to second degree murder. An important reason for avoiding 'double dipping' from first degree murder to manslaughter is so that a jury who were agreed that the crime did not constitute first degree murder, but who were divided as to the reason (provocation, no intention to cause death, diminished responsibility) could nevertheless agree on a verdict (LCR p. 8 footnote 9).

The Commission also requested comments on many possible proposals on the law on killing, including some in relation suicide, killing on request, and infanticide. Several of these are of great interest from the perspective of Catholic moral theology, and indeed from the perspective of medical ethics generally, and they will be considered below. Nevertheless, before turning to these particular issues it was necessary to set out why reform of the law on homicide is needed, and how the Law Commission is seeking to address this need. This illuminates the fundamental reasons for the report and also shows why the authors of LCR are far from wedded to the specific proposals they raise in relation to issues such as suicide and infanticide.

A General assessment

In general the Law Commission proposals seem to be an improvement on the current law of murder in England and Wales, and the basic principles invoked seem to be sound. This is especially so with regard to defining the wrongness of killing with reference to the sacredness of human life rather than the special status of certain human beings. The 'ladder principle', which underwrites the category of secondary degree murder, is also sound and is generally well applied.

It is unfortunate, however, that the report does not address directly the case for retaining the mandatory life sentence for murder. So many of its conclusions are based on this premise and yet the rationale for the premise is insufficiently explored. Furthermore, in excluding consideration of full defences, the account given of the crime of homicide is left curiously incomplete.

The case for a partial defence of duress is well established, as is the need to include 'developmental immaturity' within the partial defence of diminished responsibility (LCR 6.84). Nevertheless, the Law Commission proposals as they stand are very unclear on the crucial question of the level of maturity required to sustain the charge of 'first degree murder'. It would have been preferable if they had stated clearly that 'developmental immaturity' referred to children under the age of sixteen. Borderline cases could then be resolved through discussions of competence (analogous to those that occur in the medical law context) together with a burden of proof rule (so that it would be presumed that below the age of 16 children do not possess sufficient capacity for responsible decision making unless demonstrated otherwise, whereas children over the age of 16 would be presumed to possess this requisite capacity unless the contrary is shown).

A number of reasons support setting the age limit for responsibility for first degree murder at 16. This is the age, for example, from which children are presumed to be competent to give consent to medical treatment (with the exception of 'Gillick-competent' minors who, although below the age of 16, may nonetheless consent to medical treatment provided they demonstrate the requisite level of understanding and intelligence). It is also the minimum age for a range of other responsible choices, including marriage. It is noteworthy that Section 5 of the Domestic Violence, Crime and Victims Act 2004 exempts from indirect responsibility those who were 16 at the time of the act of violence (LCR 9.68 3(a)). It is true that, in international law and in a variety of contexts in English Law, someone is a minor until the age of 18. This is also supported by the decision of the United States Supreme Court that the execution of offenders who killed when under 18 years of age is unconstitutional.[5] Nevertheless, this decision relates to the very specific context of capital punishment, which does not apply in the United Kingdom. For our purposes here, 16 seems the most appropriate age at which one ought properly to be held responsible for first degree murder, the most serious of criminal charges.

Intention and double effect

The LCR sets out an account of intention given by Professor John Finnis which has the advantage of expressing the law of intention in what the report acknowledges is its 'ordinary meaning' (LCR 4.6). However, this account is dismissed with the words 'it is not a model we propose' (LCR 4.12), and thus without either detailed criticism or a general invitation for consultees to comment on it. This is lamentable as the Finnis account has

clear advantages over the two models which the Law Commission proposes. The meaning of intention found in ordinary language is well expressed by the report as an action 'in order to bring it about', avoiding the ambiguity of words such as 'purpose' and 'motive'. However, while it admirably identifies the ordinary meaning of intention the report nevertheless argues that the law requires a special definition of intention because 'this ordinary meaning is too narrow for the purposes of criminal responsibility' (LCR 4.6). However, in departing from the ordinary meaning, the report endorses a concept of intention which is both confused and at some distance from the meaning that jurors or members of the public would adopt. Neither is it necessary to stretch the ordinary meaning of intention in order to acknowledge that criminal responsibility extends beyond the actions that are intended (in the ordinary narrow sense). Indeed the report tacitly accepts this in setting out Finnis's definition of murder (LCR 4.81).

The analysis given in the report, while it fails either to endorse Finnis' account or to provide a convincing critique of that account, nevertheless represents an advance on many contemporary discussions of intention. A key point in their argument is derived from discussion of an example given by Lord Goff concerning a man who throws his child from a burning building in the hope of saving her life. The authors of the report rightly recognise that this is not simply a question of legally excusing the man's behaviour, and that there is a more fundamental problem with saying that 'in such a case, [he should] be deemed to have intended to kill' (LCR p. 106, footnote 55).

If this man's foresight of risk does not amount to intention, then foresight cannot be said to equate to intention more generally. The proposals in the report reflect this in the proviso that when someone has a specific purpose to avoid a result he cannot be deemed to intend that result. However, this does not go far enough, for it still maintains that, apart from these exceptional cases, in general people can be deemed to intend whatever they foresee with virtual certainty. This can be seen to be problematic in relation to another example given elsewhere in the report:

> 'D sees her violent husband speeding towards her, waving a gun, as she is waiting in her car at the lights. She speeds off even though she realises she will crash into a pedestrian who is crossing in front of her. She realises that she will cause him serious injury. The pedestrian dies as a result of his injuries' (LCR 7.5)

In the report this example is used to show the need for a partial defence of duress, but it should also be questioned whether, quite apart from duress, D's intention constitutes the essential mental component of murder. Is it reasonable to say that D *intends* to kill the pedestrian? Imagine a case similar in all respects except that a bystander out of D's field of vision pulls the pedestrian out of the way. Killing the pedestrian was so far from D's intention that she would surely be relieved that the pedestrian was saved. She was not trying to kill the pedestrian; she was trying to get away from a real and immediate danger.

This is a particular example of the principle of double effect [6] which has classical application in the medical field with regard to pain killing drugs which incidentally shorten life (though, as Gormally points out, this classic example does not fit with current best practice in palliative care [7]). In the medical case the report seems tacitly to accept Kennedy and Grubb's argument that the intention to relieve pain provides the doctor with a defence against a charge of murder.

> [T]he more appropriate analysis is as follows: the doctor by his act *intends* (on any proper understanding of the term) the death of his patient and by his act *causes* (on any proper understanding of the term) the death of his patient, but the intention is not culpable and the cause is not blameworthy because the law permits the doctor to do the act in question [8].

However, here the report is far from convincing. In the first place, as with the earlier example, it is not simply a matter of finding a defence, but of providing a sound and coherent account of intention. If the doctor gives drugs not in order to shorten life but in order to relieve pain, but the drugs have a side effect that they shorten life, is it accurate to say that the doctor '*intends*… the death of his patient'? In the second place, if it is the motive of relieving pain that provides the doctor with a defence against murder (rather than an account of intention and double effect), it is difficult to see why this does not apply equally to deliberate euthanasia. It is noteworthy that Kennedy and Grubb take their critique of double effect from Glanville Williams, a utilitarian who openly advocated infanticide of 'monsters', compulsory sterilisation of the 'unfit', and involuntary euthanasia of those judged not to have a worthwhile existence [9]. This catalogue of opinions ought to be enough to demonstrate the importance of an adequate account of intention.

Nevertheless, while the Law Commission fail to advocate a coherent account of intention that would support double effect, their proposals do represent some improvement on the law as it stands. The Law Commission has, however, missed an ideal opportunity to remedy the current legal situation in this respect.

Euthanasia and suicide

The Law Commission is to be commended in particular for its judgment that the reform of the homicide provisions is not the appropriate place for a debate on legalising euthanasia:

> 'It would not be appropriate to permit a 'right-to-die' or a euthanasia debate to take place on this issue, when we have been asked not to enter into those debates on a closely related issue (full legalisation).' (LCR 8.5)

It is further to be applauded for calling attention to the danger of legislation that seeks to characterise mercy as justificatory reason for killing:

> 'Showing admirable flexibility in its thinking, when the CLRC came to make its final report, the suggestion for a new offence along the lines discussed was dropped as it had little support from consultees. The reasons that consultees opposed it are worth highlighting:
>
> [I]t was said that our suggestion would not prevent suffering but would cause suffering, since the weak and handicapped would receive less effective protection from the law than the fit and well because the basis of the suggested new offence would rest upon the defendant's evaluation of the condition of the victim. That evaluation might be made in ignorance of what medicine could do for the sufferer. We were reminded, too, of the difficulties of definition.

> This shows the unsatisfactory character of an offence, or partial defence, that relies principally on justificatory reasons for killing in its definition' (LCR 8.49-8.50).

These reasons are indeed 'worth highlighting' and it is to be hoped that, by doing so, the Commission makes it less likely that this much-needed reform of the homicide law is hijacked by those who would use it to place 'mercy killing' on the statute book without adequate debate of the public policy dangers.

The Commission is clear that euthanasia is murder in English law, and under the proposed reform it would remain so:

> English law regards euthanasia or 'mercy' killing as murder. Under our proposals, euthanasia or 'mercy' killing will be "first degree murder" (see Part 2). Legalisation of euthanasia, or of the provision of assistance in dying, are outside our terms of reference. (LCR 8.3)

The report does not make any justificatory case for euthanasia nor any recommendation that would directly affect the legal situation of healthcare workers. The question of whether to legalise euthanasia lies outside the scope of the report. One is left with the impression, too, that legalisation is an eventuality which the authors of the report would not welcome. However, whereas there is no defence of euthanasia as such, there is an extended consideration of carers who, depressed by years of caring, accede to the wishes of a patient who requests to be killed. The key consideration here is the depressed state of the carer and the argument hinges on diminished responsibility, which would not in general apply to a professional healthcare worker. At this point the report raises for consideration the alarming proposal that, uniquely among partial defences, killing by a carer of someone who consents to be killed should result in 'double dipping' from first-degree murder down to manslaughter. This would contradict the general policy of the report against double dipping and would serve no good purpose, as second degree murder is itself subject to discretionary penalties depending on the circumstances. Moreover, it would strongly convey the impression that these circumstances uniquely provide a justificatory reason for killing, even though this is not fully recognised in law, and that such an act should thus be met with the minimum possible sentence. This proposal also conflicts with the report's important claim that partial defences for intentional killing should relate not to the status of the victim but to the reduced culpability of the offender. The depression of the offender from years of stress working as a carer is relevant to level of responsibility and hence to culpability. However, the alleged fact that the victim consents to be killed (i.e. that he or she is suicidal), should not count as a reason why he or she is less worth of the protection of the law.

On a positive note, the report provides very good examples which demonstrate convincingly that section 4 of the Homicide Act 1957 should be repealed: the fact of a suicide pact should not be sufficient on its own to constitute a partial defence against a charge of murder. Indeed in the era of suicide bombers, few people remain persuaded that suicidal intent should mitigate someone's responsibility for homicide.

More problematic is the proposal that if the conduct that killed the victim was meant by the defendant and the victim to end both of their lives, the charge ought to be not murder (either first or second degree) nor manslaughter but only complicity in suicide (under

section 2 of the Suicide Act 1961). This obscures the fact, clear in current legislation, that if conduct intentionally kills the victim then it is homicidal, notwithstanding that the victim wished to by killed and notwithstanding that the conduct is meant also to kill the perpetrator. This is not 'complicity in suicide', it is homicide, and it would be both confusing and unjust to deem it to be a form of suicide. Furthermore, as discussed in relation to suicide pacts more generally, the suicidal character of the perpetrator is itself no mitigation. Think of the man who drives a car with himself and his wife into the river, though he survives. His action was intended to kill them both, and her consent to suicide may be subject to precisely the kind of controlling manipulation that the report recognises in relation to suicide pacts more generally (LCR 8.68 and following).

Child destruction and infanticide

At the outset the authors restrict the scope of the report in various ways [10]. They decide not to comment on child destruction (the offence of killing a child in the womb capable of being born alive) as this is considered to be too close to abortion, which falls outside the scope of the review. This represents a missed opportunity for clarification but at least the report does not propose any further relaxation of the existing law.

The report gives significant attention to the offence of infanticide. The Infanticide Act was passed in 1922 as an ad hoc piece of legislation at a time when there was no partial defence of diminished responsibility and when murder was a capital offence. It reflected a recognition that nursing mothers were prone to depression and that a mother's killing of her own child in these circumstances was less culpable than murder with malice aforethought. However, given that the Homicide Act 1957 includes a general category of diminished responsibility it is reasonable to question whether the particular category of infanticide is necessary. The report states that 'the existence of the offence/defence of infanticide does not imply that the law devalues the lives of infants' (LCR 9.42). Rather, the law 'recognises that the circumstances of the killing (in particular, the disturbance of the mother's mind) justify the provision of a lesser offence than murder'. However, if it is the disturbance of the mother's mind that attracts the lenient sentence, it is unclear why a separate law is needed.

The Infanticide Act as its stands is certainly in need of comprehensive reform. For example, its application is unduly narrow. The Act is limited to the biological mother and to the killing of a very young child. In the original act the victim had to be 'newly born' but this was amended in 1938 so that it applied to the killing of a child under one year old due to the disturbance of the mother's mind 'by reason of lactation' (LCR 9.7). The act does not cover the killing of older children by a mother who has just given birth nor the killing of young children by a father or stepmother. Further problems arise from the fact that the Act can be applied only if it is referred to in the original charge or if it is invoked by the defence. In cases where a mother argues her innocence or is in denial, she would be guilty of murder if convicted.

In terms of the underlying rationale there seems no good reason to maintain a separate crime of infanticide, and without such the suspicion must be that the category involves precisely the 'devalu[ing] of the lives of infants' which the report rightly criticizes. The key argument in favour of retaining these crime seems to be 'the sentencing pattern which has emerged over the last fifty years in infanticide cases [which] means that the death of a child under the age of one year contrasts sharply with sentencing under other legislation' (LCR 9.73). However, the report does not enquire whether this anomalous

sentencing pattern is appropriate. The greater recognition in recent years of domestic violence against small children, evident, for example, in the Domestic Violence, Crime and Victims Act 2004, supports taking these crimes no less seriously than other forms of child killing.

There is an opportunity here to abolish infanticide as a separate offence and assimilate deserving cases with other forms of diminished responsibility. However, the report seems more inclined to extend the offence/defence of infanticide, with its pattern of non-custodial sentencing, to fathers, stepmothers and unrelated carers, and to the killing of children over the age of twelve months. This would certainly remove significant protection from the most vulnerable in society just at a time when other forms of domestic violence are at last being taken seriously. Nevertheless, even here the concern of the report is with excusatory reasons which should be reflected in sentencing, not with justificatory reasons based, for example, on the supposed low quality of life of a disabled infant. Hence the proposals would not change the legal position of doctors and other healthcare professionals in respect of their duty of care for young infants.

The prospect of a new Homicide Act

This brief exposition of the Law Commission report on the reform of the homicide laws has presented the case that reform is both necessary and welcome. It has also made clear that the particular proposals of most concern from the perspective of the Catholic moral tradition (on infanticide, on suicide pacts, and on carers who kill) are marginal to the central case for legal reform. The report is strong in relation to some of these issues and weak in relation to others, but there is no systematic pro-infanticide or pro-euthanasia agenda. On such particular questions the authors seem not to have reached any final decisions. While they remain open to argument on such matters there are dangers, but there are also opportunities. Furthermore, none of these proposals affect the legal position of doctors. Even the most controversial of the proposals concern excusatory rather than justificatory reasons for killing.

The main proposals for an offence of second degree murder, a reform of partial defences, and a slight modification of the legal definition of intention, represent a considerable improvement on the present law, or at least do not worsen it. In general, the overall weakness of the report lies more in its failure to correct present injustices rather than in any introduction of new ones. Probably the greatest danger with this proposed reform of the law of homicide lies not in any of these proposals (even with regard to infanticide and suicide) but in the prospect that a bill, once introduced into parliament, might get hijacked by the euthanasia lobby. From this perspective the present report is much better than it might have been. It provides a solid basis from which to press the government, both to support this much needed reform of the homicide laws and also ‘to be vigilant in preventing any individual from using the bill as a vehicle to legalise euthanasia by stealth’ [11].

Notes:

[1] Law Commission (2005) *A New Homicide Act for England and Wales?* Consultation Paper No 177.

[2] The present authors submitted a response on behalf of St Mary's College, Twickenham. We also helped draft a brief response, limited to the issues of euthanasia and infanticide, which was submitted by the *Care Not Killing* Alliance. The Christian Lawyers Fellowship also submitted a response. This advocated a similar position on euthanasia and infanticide to that of St Mary's, but differed considerably on other issues. The CLF opposed the creation of the offence of second degree murder (which we supported) and endorsed the report's account of intention (which we rejected as flawed in principle). In due course all responses will be made publicly available.

[3] *R v. Woollin* [1999] 1 AC 82 (HL)

[4] Catholic Bishops' Conference of England and Wales (2004) *A place of Redemption: A Christian approach to punishment and prison* London: Burns & Oats, p. 7.

[5] LCR 6.77 citing *Roper v Simmons* (2005) 112 SW 3d 397 (affd) *per* Kennedy J.

[6] On the principle of double effect see Anscombe, GEM (1982) 'Action, Intention and Double Effect' in M Geach and L Gormally (eds.) (2005) *Human Life, Action and Ethics: Essays by G E M Anscombe* St Andrews, UK: Imprint Academic; Boyle, J (1991) 'Who is entitled to double effect' *Journal of Medicine and Philosophy* 16(5):475-494; Finnis, J (1991) 'Intention and Side effects' in Frey R G (1991) *Liability and Responsibility* Cambridge: CUP; Keown, J (2004) *Euthanasia, Ethics and Public Policy: An Argument against Legalisation* Cambridge: CUP, pp. 18-30; Watt, H (2000) *Life and Death in Healthcare Ethics* London: Routledge, pp.37-44.

[7] Gormally, L (2005) 'Why not dirty your hands? Or: on the supposed rightness of (sometimes) intentionally cooperating in wrongdoing' in Watt, H (2005) *Cooperation, Complicity and Conscience: Problems in healthcare, science, law and public policy* London: the Linacre Centre, p. 23.

[8] LCR 4.87 quoting Kennedy I, Grubb A (1994) *Medical Law: Text and Materials* (2nd ed) p. 1207.

[9] Williams, Glanville (1957) *The sanctity of life and the criminal law*. New York: Knopf.

[10] This is clearly necessary as, even in its present form, the Law Commission report is 360 pages in length with 72 questions inviting comment.

[11] From the Response from the *Care Not Killing* Alliance to the Law Commission's *A New Homicide Act for England and Wales* consultation paper April 2006.